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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

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**BLENDTEC INC.**, a Utah corporation,

Plaintiff,

vs.

**BLENDJET INC.**, a Delaware corporation,

Defendant.

**DEFENDANT BLENDJET INC.'S  
RESPONSE TO BLENDTEC INC.'S  
MOTION RELATED TO SCOPE OF  
EMAIL DISCOVERY**

Civil No. 2:21-cv-00668-TC-DBP

Judge Tena Campbell  
Magistrate Judge Dustin B. Pead

Defendant BlendJet Inc. hereby responds to Plaintiff Blendtec, Inc.’s Motion Related to Scope of Email Discovery. (Dkt. 53 (the “Motion”)).

BlendJet has collected email from the Designated ESI Custodians, and has provided Blendtec with a search term hit report. The parties are tailoring the search terms that resulted in an overly-burdensome number of hits. BlendJet will soon commence its production of responsive custodial email ESI on a rolling basis, in accordance with the scope of discovery that it has agreed to produce in response to Blendtec’s outstanding discovery requests.<sup>1</sup>

The only real dispute between the parties is as follows: Whether, upon identifying emails belonging to a Designated ESI Custodian that contain at least one search term hit, a party is required to produce *all* such (non-privileged) emails without further review of any kind – or whether the party is *only* obligated to produce such (non-privileged) emails that are responsive to specific requests and within the scope of discovery under Fed. R. Civ. P. 26. Blendtec has taken the former position, and BlendJet the latter. (*See* Motion at 1-2; Dkt. 53-2 (*passim*); 53:3 at 1.)

Blendtec’s position runs counter to Fed. R. Civ. P. 26, as well as the terms of the ESI Protocol in this case. (Dkt. 33). Under Rule 26(b)(1), discovery is limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” *See Bistline v. Snow Christensen & Martineau, P.C.*, Case No. 2:16-cv-788 TS, 2020 WL 4430466, at \*4-5 (D. Utah July 31, 2020) (Pead, J.) (denying short form discovery motion on the basis that “discovery is not without limits[.]”). Rule 26 expressly protects BlendJet from being required to produce irrelevant emails, as those documents fall outside of the scope of permissible discovery – even if they contain a search term provided by Blendtec.

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<sup>1</sup> BlendJet anticipates making its first production of custodial email during the week of January 16, 2023.

The terms of the ESI Protocol are aligned with Rule 26: the production of custodial ESI – including email – is expressly limited to “responsive documents.” (Dkt. 33 at ¶ 28, 29-30 (referencing a producing party’s obligation to produce ESI “responsive to the requesting party’s requests for production from the producing party”)). Neither Paragraph 35, nor any other term in the ESI Protocol, prohibits a party from engaging in a responsiveness review of documents returned from search terms, or otherwise abrogates the limitations on discovery imposed by the Federal Rules by requiring the production of non-responsive and irrelevant documents. To the contrary, the ESI Protocol provides: “This agreement is not intended to function in lieu of Federal Rule 34 or any other applicable Federal Rule of Civil Procedure....” (Dkt. 33 at ¶ 73). The Court should deny the Motion.

BlendJet requests award of its attorney’s fees under Rule 37(a)(5)(B).

Dated: January 13, 2023

PARSONS BEHLE & LATIMER

By

/s/ Nathan D. Thomas

NATHAN D. THOMAS

Attorneys for Defendant BlendJet Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of January, 2023, a true and correct copy of the foregoing document was filed with the Court's CM/ECF system and served on the following counsel of record via the CM/ECF notification system:

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Executed on January 13, 2023, at Salt Lake City, Utah.

By: /s/ Nathan D. Thomas  
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